

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gene L. Niles,)	C/A No.: 9:10-2348-JFA-BM
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Michael Johnson, et al, Individual and)	
Official Capacity; Sgt. Unknown First Name;)	
Mrs. Brown McKennize; Ms. Gamble;)	
Medical Staffs Name Unknown; and)	
Dennis Walker,)	
)	
Defendants.)	
)	
_____)	

The *pro se* plaintiff, Gene L. Niles, brings this action pursuant to 42 U.S.C. § 1983 claiming violations of his constitutional rights by the defendants. At the time the complaint was filed, the plaintiff was incarcerated at the Williamsburg County Detention Center.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should grant the defendant's motion to dismiss the defendant "Medical Staffs Name Unknown."² The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for dismissal. Plaintiff did not respond to the motion.

a recitation and without a hearing.

The plaintiff was advised of his right to file objections to the Report and Recommendation which was filed on February 1, 2011. Plaintiff did not file objections to the Report. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

As the Magistrate Judge correctly notes, only “persons” may act under color of state law, therefore, a defendant in a § 1983 action must qualify as a “person.” Use of term “staff” without a specific staff member name is not adequate to state a claim against a “person” as required in § 1983 actions.

After a careful review of the record, the applicable law, the Report and Recommendation, the court finds the Magistrate Judge’s recommendation to be proper and incorporates the Report herein by reference. The defendant’s motion to dismiss defendant “Medical Staffs Name Unknown” pursuant to Rule 12(b)(6) and 4(m) of the Federal Rules of Civil Procedure is granted without prejudice.

The Clerk shall return this file to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

March 7, 2011
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge